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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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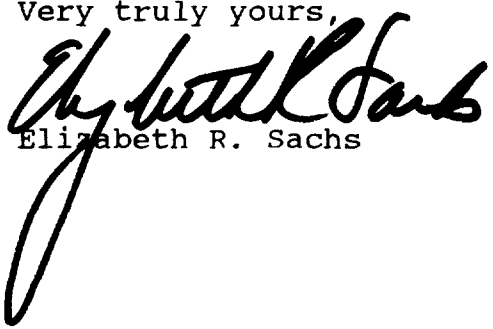
Re: RM-8387: REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Reply Comments in Rulemaking Proceeding RM-8387.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,


Elizabeth R. Sachs

ERS:cls

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
AMTA Petition for Rule Making)
)
Amendment of Section 90.631)
Of The Commission's Rules To)
Eliminate The Trunked System)
Five-Year Loading Requirement)

RM-8387

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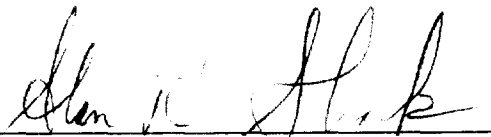
To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:



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January 3, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.405(b) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits the following reply to the statements in support of the Association's proposal¹ to eliminate the trunked system five-year loading requirement 47 C.F.R. § 1.405(b). The favorable comments from all interested parties evidence industry-wide approval for the proposal and warrant prompt FCC action on it.

I. BACKGROUND

In its proposal, AMTA recommended that the FCC initiate a rule making proceeding to eliminate the five-year loading requirement for trunked systems. The

¹Petition for Rule Making of AMTA, filed October 29, 1993. See Public Notice Report No. 1986, November 16, 1993.

applicability of that requirement, as embodied in FCC Rule Section 90.631(b), is already limited to those 800 MHz and 900 MHz stations originally licensed prior to June 1, 1993. 47 C.F.R. § 90.631(b). Thus, the rule is already scheduled to be "sunset out" in less than five years. The Association proposed that the sunset provision be accelerated to the earliest possible date and, in a separate pleading, requested that the Commission stay its enforcement of the loading "take back" provisions pending FCC action on the proposal itself.²

In support of its request, the Association noted that the public interest rationale for the requirement had diminished over time, as already acknowledged by the FCC in its decision not to apply the rule to systems granted on or after June 1, 1993. AMTA explained that while the requirement had ensured the intensive utilization of valuable frequencies in spectrum deficient markets during the earlier years of 800 MHz trunked system implementation, the industry had matured sufficiently to no longer require that regulatory prod, particularly in light of ever increasing competitive wireless alternatives. Spectrum is simply too valuable in metropolitan areas for entrepreneurs to leave it underutilized.

Conversely, however, the FCC's heretofore properly balanced regulatory scheme, in which the five-year loading requirement was triggered only in markets with insufficient spectrum to satisfy prospective service providers, has been disrupted by a deluge of infomercial-prompted, seemingly speculative trunked system applications.

²AMTA's request for a stay in the enforcement of the rule was not opposed by any party and was specifically supported by the National Association of Business and Educational Radio, Inc. ("NABER").

Markets in which there is no shortage of capacity to serve the interested public and which have never experienced spectrum deficiencies nonetheless have waiting lists of applicants for frequencies. Licensees who have invested in developing systems in those areas, but who serve fewer customers than the urban-oriented loading standards set out in the FCC Rules, will lose constructed, operational frequencies to parties which may never actually construct them. While AMTA's Petition identified a number of public interest bases to support its request, the unintended, but nevertheless highly injurious, result described above may be the most compelling.

AMTA's proposal was supported by NABER, Nextel Communications, Inc. ("Nextel"), PowerSpectrum, Inc. ("PSI") and, in part, by the Industrial Telecommunications Association, Inc. ("ITA") and Council of Independent Communication Suppliers ("CICS"). With the minor modifications proposed in certain of those comments, AMTA urges the FCC to proceed expeditiously to adopt this industry-supported initiative.

II. DISCUSSION

PSI noted that 900 MHz licenses are subject to FCC Rule Section 90.631(i), in addition to Section 90.631(b). 47 C.F.R. §§ 90.631(i),(b). That rule provided an interim two-year renewal for 900 MHz trunked SMR systems which had not met their initial five-year loading requirement, but also reaffirmed the obligation to satisfy the Section 90.631(b) loading requirement at the end of that two-year renewal term. PSI is correct that the provisions of Section 90.631(i) would be meaningless should the FCC eliminate the underlying Section 90.621(b) requirement and that the two subsections

should be handled in tandem. AMTA agrees

PSI also urged the FCC to address the issue of the number of frequencies licensable to a single entity within a specific geographic area absent satisfaction of the current loading standard in this proceeding, if that matter is not addressed in the pending 800 MHz and 900 MHz wide-area rule making proceedings. Nextel expressed a similar recommendation and urged the FCC to eliminate the 40-mile rule in addition to the five-year loading requirement. 47 C.F.R. §90.627(b).

The Association concurs generally with those parties that the trunked 800 MHz and 900 MHz industries are highly competitive. Trunked operators in these bands do not require artificial limitations on ownership of facilities within a market, restrictions that severely limit their spectrum resources *vis-a-vis* their cellular and prospective PCS competitors. However, the Association recommends deferral of any proposal to eliminate the 40-mile-rule pending final action on the 800 MHz and 900 MHz wide-area proceedings. It is unclear what mechanism PSI or Nextel would propose in lieu of that rule to ensure that application mills did not secure all remaining trunked spectrum throughout the country. That matter resists facile conclusions and warrants serious consideration which is beyond the scope of the instant, much more limited proposal.

Finally, ITA/CICS supported AMTA's proposal as it relates to SMR spectrum. However, they requested that inter-category channels assigned to trunked SMR spectrum continue to be subject to the five-year loading requirement. The Association assumes, although the parties did not state specifically, that they would propose retention of the loading requirement for all non-SMR trunked systems as well.

AMTA appreciates the concern that spectrum not be underutilized if demand outstrips supply. While the scenario described in their joint comments is not likely to occur as inter-category channels are available only to already loaded trunked SMRs and, even then, in very small increments, it is conceivable.

Nonetheless, the industry's experience with inconsistent short-spacing rules applicable to different frequencies assigned to the same system is persuasive evidence that such an approach would be unduly burdensome for both the FCC and the industry. AMTA is confident that the number of instances in which the provision proposed by ITA/CICS would apply is sufficiently small that a dual regulatory structure is not warranted.

III. CONCLUSION

There is clear industry support for the expeditious elimination of the five-year loading requirement. AMTA urges the FCC to proceed promptly to initiate this rule change, consistent with the views expressed herein.

CERTIFICATE OF SERVICE

I, Cheri L. Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 3rd day of January, 1994 caused to have hand-delivered and federal-expressed a copy of the foregoing **REPLY COMMENT** to the following:

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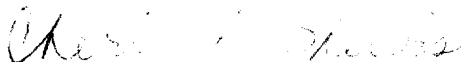
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* via Federal Express